

ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)
)
Implementation of Section 255 of the)
Telecommunications Act of 1996)
)
Access to Telecommunications Services,)
Telecommunications Equipment, and Customer)
Premises Equipment By Persons with Disabilities)

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COMMENTS OF SIEMENS BUSINESS COMMUNICATION SYSTEMS, INC.

Siemens Business Communication Systems, Inc. (Siemens), by its attorneys, hereby files these initial comments in response to the Notice of Inquiry, FCC 96-382, issued in the above-captioned docket. We appreciate this opportunity to provide the FCC and the Architectural and Transportation Barriers Compliance Board ("Access Board") with comments on the implementation of Section 255 of the Communications Act of 1934, as amended ("the Act").^{1/} Siemens also is participating in this proceeding through the Telecommunications Industry Association, whose separate comments Siemens expressly endorses.

As a manufacturer of telecommunications and customer premises equipment (CPE), Siemens has a longstanding interest in facilitating access to the telecommunications network by all of its customers. Its continued commitment to this issue is demonstrated through Siemens' membership on the Telecommunications Access Advisory Committee to the Access Board. This participation has given Siemens an understanding of the issues involved in ensuring that telecommunications services are accessible to and usable by persons with disabilities.

^{1/} 47 U.S.C. § 255. For ease of reference, the Access Board and the FCC will be referred to collectively as "the Commission."

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I. IN LIGHT OF THE EVER-CHANGING DYNAMICS OF THE TELECOMMUNICATIONS MARKETPLACE, THE COMMISSION SHOULD ADOPT FLEXIBLE GUIDELINES, RATHER THAN RIGID RULES, TO IMPLEMENT ACCESS BY PERSONS WITH DISABILITIES

Section 255(b) requires that a manufacturer of telecommunications equipment or CPE ensure that the equipment is designed, developed, and fabricated to be accessible to and usable by individuals with disabilities, if readily achievable. Siemens concurs with the Commission "that the rapid pace of market and technological developments means that what is 'readily achievable' is an ever-changing dynamic: an accessibility solution which is difficult or impossible to implement at one point may become an established cost effective technology a short time later." It is for this reason that we are proposing mechanisms which are sufficiently flexible to allow for new technologies and which encourage innovative development of telecommunications access technology.

Specifically, Siemens recommends that the Commission utilize the following objectives in selecting mechanisms for implementing telecommunications access:

1. The Commission should identify those areas where real harm is being done and develop a quick and effective remedy for these situations on a case-by-case basis.

Among persons with disabilities are those who are impeded in some essential function by lack of access to telecommunications facilities. An extreme example might be persons with disabilities who have suffered serious consequences, such as job loss, because of this lack of access. These situations require quick and effective remedies. Where there are substantial impacts on people's lives through lack of telecommunications access, every effort must be quickly made to determine if readily achievable access solutions can be found and implemented.

2. The Commission should encourage early, effective inclusion of access considerations in the design process with pre-market verification.

Access considerations must be incorporated into the product design process itself at the earliest possible time. Measures for effective verification of successful implementation of access features should be taken before the product is introduced to the market.

3. The Commission should refrain from mandated regulations and, instead, encourage innovation in the development of access solutions.

By their fundamental nature, mandated regulations can define only a minimum level of performance and often inhibit further innovation. To encourage innovation in the design of access features, prescriptive rulemaking should be avoided. Guidelines should be used which allow technological flexibility and encourage research and innovation leading to improved access features.

4. The Commission should avoid subjecting manufacturers with burdensome reporting and record-keeping requirements.

A disability access solution should maximize value-added activities, such as engineering and research, while minimizing administrative and compliance activities, which add less functional value to the telecommunications product.

5. The Commission should forbear from prescribing universal solutions to any disability access situation.

The telecommunications industry finds itself in a highly competitive and quickly changing environment. New technologies are fundamentally changing the very definition of what constitutes telecommunications. Also, the globalization of the world market makes it impossible to speak meaningfully about an isolated U.S. market. Given the rapidly changing, highly competitive and global nature of today's telecommunications markets, it is imperative that new regulatory and compliance requirements be introduced with the utmost care and only after thorough analysis. Any regulatory action can have competitive consequences, and unforeseen

consequences are almost inevitable. The incremental burden of new regulations may well make the difference in the continued existence of some products. Every effort should be made to minimize the marketplace impact of any regulatory action so that U.S.-based businesses may remain competitive.

The cost of providing telecommunications access to persons with disabilities should be balanced against the benefit to be derived. Every increase in cost will necessarily preclude some on the lower end of the economic scale from being able to afford the now more expensive equipment. Careful investigation at every step is needed to optimally balance the affordability of telecommunications with specific needs.

The availability of the broadest range of products in the U.S. market also must be protected. Already, cases can be cited where products are not marketed in the U.S. due in part or entirely to the more stringent regulatory requirements that exist in the United States than in other countries. It would be most unfortunate if new mandated regulations further denied to all Americans products which are readily available in other world markets.

6. The Commission should provide clear guidance by which compliance can be gauged.

Manufacturers need to be able to measure the compliance of the design of their product. Section 255 establishes the framework, but industry needs clear criteria by which it may measure its compliance with the law. In measuring compliance, however, the Commission must provide due consideration to industry's need to maintain the confidentiality of business and technical information.

7. In designing its disability access program, the Commission must recognize that Telecommunications Access Engineering is at an early stage of development.

In addressing the needs of persons with disabilities, the Commission must recognize that the technical understanding of potential solutions is in a very early stage of

development. A great deal of research and development is required before effective and broad-based access solutions can be provided. Although the means to provide access to traditional telecommunications equipment has a long history, the pursuit of this same access in today's rapidly changing telecommunication environment is in its infancy. Indeed, today there is not even a measurement of a product's accessibility. Siemens has sought diligently for a succinct and objective measure of accessibility and has found no such measure. Indeed, we have confirmed the Commission's understanding that varying disabilities may require alternative solutions. Factors which increase access for one population can actually decrease access for a different population. Even within a single disability category there may not be a single solution. A solution which increases access for a segment of a given disability population may do nothing for others with the same disability.

II. THE COMMISSION SHOULD ESTABLISH CLEAR GUIDELINES OF MANUFACTURERS' COMPLIANCE WITH SECTION 255 USING A FOUR-PART TEST

In light of industry's need for a gauge with which it may measure its compliance with Section 255, Siemens recommends that clear guidelines be issued in the form of a simple, four-part test of compliance utilizing a voluntary Declaration of Conformity procedure.

1. The first step would be to encourage development of a disability access plan for each new product. This plan would detail the implementation of readily achievable access for that product. In addition it would provide evidence of the company's commitment to implementing the planned access in the product. The plan should cover not only the product itself but also the customer support required to make the product's access clearly and readily available to consumers. If a telecommunications company deems that access to their product is not readily achievable, then the plan should include the following:

- i) a record of accessibility options considered,
- ii) reasons why accessibility is not readily achievable,
- iii) a plan for readily achievable compatibility,
- iv) a record of compatibility options considered,
- v) reasons why compatibility is not readily achievable.

2. The second step would be to verify the successful implementation of the access plan in the final product. Adequate testing would demonstrate that the proposed level of access was successfully achieved in the final product.

3. Given that there is at this time no substitute for a knowledgeable individual, skilled in the art of access engineering, the third requirement would be that an appropriately qualified individual develop both the access plan and supervise the verification of that plan.

4. The final requirement would be that a company declare its compliance on a Declaration of Conformity (DOC). For products which utilize the recently adopted Declaration of Conformity process to show compliance with FCC Part 15, access declaration would be a second item on the same form.^{2/} This simple expedient will save substantial administrative cost. For other products the same form would be used to declare disability access. We note that the FCC documented \$250,000,000 of savings to the PC industry by introducing the Declaration of Conformity process.

A complaint with regard to access would be judged against these four points. Did the company claim conformance on a DOC document? Was there a plan to provide access, in keeping with the current state of the art, and was such a plan adequately verified in the final product? Were both the plan and verification conducted by a person with adequate training and current in access engineering? If the answers to these questions is affirmative, then a company should be judged to have complied with its obligations.

III. THE COMMISSION SHOULD RELY ON CONSENSUS ENGINEERING STANDARDS AND SHOULD CONSIDER THE ESTABLISHMENT OF A JOINT INDUSTRY-CONSUMER ADVISORY BOARD

In implementing Section 255, Siemens recommends that the FCC and the Access Board rely on consensus industry standards and consider the establishment of a joint industry-consumer advisory board to advise the industry in setting consensus standards and to advise the FCC in the Section 255 complaint process.

^{2/} Amendment of Parts 2 and 15 of the Commission's Rules To Deregulate The Equipment Authorization Requirements For Digital Devices, ET Docket No. 95-19, May 14, 1996.

A. Compliance Verification:

The issue of what constitutes adequate verification of a product's access plan is best addressed by consensus standards. Verification of access ultimately will take many forms. For example, verification of hearing aid compatibility will be highly technical requiring extensive engineering test equipment and highly specialized personnel. In other areas, however, marketing tools such as customer trials will most effectively address the issue. In some cases, simple checklists will be found to be adequate. Defining adequate verification is a large, highly detailed and very technical task, which recommends itself to the consensus arena for optimal resolution.

B. Access Engineering:

Perhaps the most productive role the FCC and Access Board can play is to participate actively in the development of access engineering standards. Currently there are very few standards in this area. Many more consensus standards are needed to document consensus practices and provide for compatibility between telecommunications and adaptive equipment. The task of providing disability access is so large and multifaceted as to defy solution by any one interest. It is vital that industry and the disability community continue and deepen the dialogue which is currently taking place. The facilitation of this dialogue is vital to achieving a optimal realization of telecommunication access.

C. Training:

Successful telecommunication access engineering will require a cadre of trained access engineers. Currently there are probably only a few hundred people with an appropriate background, while we estimate that the industry will require between 5,000 and 10,000 trained individuals. Most of these individuals will implement access provisions as part of their other duties. The educational effort required to train these practitioners adequately requires careful planning. The development of training material and courses is vitally important to the successful

fulfillment of the goals of the statute. Providing seminars, such as the FCC currently does for Part 15 compliance, would be very helpful. Development of criteria for use in training and then credentialing individuals as having the requisite knowledge would be a great contribution.

The FCC, as well as the Access Board, has a long and successful history of working with industry in developing consensus standards. We would recommend that the FCC and Access Board extend that practice into the area of access standards as well. There is currently an investigation taking place into establishing an engineering society to focus on the specific issue of access engineering. Such an organization would serve a multitude of purposes, including ongoing dialogue between the disability community and industry, shared research and technical information, practitioner training and development of a body of literature in this area. The FCC and Access Board's encouragement of such an effort could be vital to its successful realization.

D. Transitional Issues/Joint Industry-Consumer Advisory Board:

The successful implementation of telecommunications access will require the development of many tools and structures which do not currently exist. Siemens encourages the Commission to give careful attention to coordinating the development of these tools and structures and the introduction of standards which encourage their use.

As consensus standards are being developed, it would appear advisable to establish an advisory panel which would include consumer and industry representation. Such a joint industry-consumer advisory board would be available to the FCC to aid in reviewing inquiries about disability access. The inquiry process should be open to companies as well as consumers because some companies may desire an opinion before they implement a decision regarding access. Such a panel also could provide a resource to the FCC in handling complaints. The expert panel, representing a broad range of interests and perspectives, could attempt to resolve

complaints in the first instance before formal FCC involvement. This panel would have the collateral effect of building a joint industry/consumer understanding of what readily achievable access means in the most tangible terms.

E. Consumer Communication:

Consumers need to be informed regarding the successful implementation of the provisions of Section 255. The disabled will want to know what is being done to improve telecommunications access. Individual consumers will want to make sure they are aware, in a timely manner, of access options available to them. We are concerned that if other vehicles for informing the public are not developed, the FCC's complaint process may, de facto, serve this function.

It is hoped that a proactive attempt to disseminate information coupled with an effective inquiry mechanism will materially reduce the need for complaints to be filed. We believe that the availability of third party review of inquiries, as described in the preceding section, will aid in the effective development and implementation of telecommunications access.

F. Marketplace Monitoring:

Development of access solutions for the current and emerging telecommunications environment will be a very dynamic process. The Access Board is required by the statute to develop and maintain guidelines on disability access to telecommunications. This implies an ongoing monitoring of the telecommunications market. If this information could be provided on a regular basis, such as periodic reports, special focus could be brought to the areas of greatest need. Bringing all parties together to focus on specific issues has proven to be an effective way of finding solutions. The FCC's own efforts to bring industry and consumers together on the issue of hearing aid compatibility with cellular phones stands as a prime example of how an ongoing summit process has made substantial progress toward finding solutions. Indeed, there are

currently 50 engineers working cooperatively through the ANSI committee toward the goal of finding full and effective solutions for wireless hearing aid compatibility.

IV. CONCLUSION


Siemens urges the Commission to adopt the program described in these comments as the most effective approach to achieving the goal of accessible telecommunications. It balances immediate targeted action with deliberate universal mandates. It encourages best efforts performance while providing for a requirement of minimum performance. Ultimately, it encourages all interested parties to work collaboratively and in good faith to achieve the maximum benefit. The goal is to achieve not just a minimum level of compliance but an innovative, creative realization of the best access our united effort can provide.

Respectfully submitted,

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